

STATE OF MICHIGAN
COURT OF APPEALS

ANN C. NILSSON,

Plaintiff-Appellant,

v

VILLAGE OF OXFORD, BUILDING OFFICIAL
for the VILLAGE OF OXFORD, and CHUCK
SCHNEIDER,

Defendants-Appellees.

UNPUBLISHED

August 7, 2003

No. 234025

Oakland Circuit Court

LC Nos. 98-010346-CZ;

98-011492-AA

Before: Markey, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals¹ from a final judgment affirming the challenged decisions of the Village of Oxford Zoning Board of Appeals (“Oxford ZBA”) and of the Oxford Planning Commission (“OPC”), and dismissing both consolidated cases. We affirm in part, reverse in part, and remand.

This case arises from defendant Chuck Schneider’s proposed, and ultimately completed, development of property zoned as an “office/service district” that is located adjacent to plaintiff’s residential home. Schneider submitted an application and site plan to the OPC for approval to construct the instant project. Upon review, the OPC tabled Schneider’s request for site plan approval until additional architectural and engineering information was provided and approved, and the necessary variances were obtained from the Oxford ZBA. Thereafter, the Oxford ZBA heard Schneider’s request for two variances, concerning provisions of the Village of Oxford’s Zoning Ordinance No. 307 (the Ordinance) prohibiting parking in the front yard setback of commercial property and requiring a twenty-foot rear setback from the parking lot to the neighboring residential district. After holding a public hearing on the matter, the Oxford ZBA voted to grant the variances, conditioned on Schneider erecting a board fence along with the landscaping and posting a no-right-turn sign. Thereafter, the OPC approved Schneider’s revised site plan. Plaintiff, on two separate occasions, filed a complaint and claim of appeal in

¹ Plaintiff appeals as of right from the original actions filed in circuit court, but by leave granted with respect to her appeals of the circuit court’s decisions on her appeal from the decisions of the zoning board of appeals and the planning commission.

Oakland Circuit Court concerning the Oxford ZBA's decision and the OPC's decision.² The cases were ultimately consolidated, and on April 10, 2001, the trial court entered a final order affirming the Oxford ZBA's and OPC's decisions and dismissing the consolidated cases. This appeal ensued.

Although plaintiff "does not dispute [] Schneider's right to construct an office building on the property in front of her house," she maintains that the building and parking area must be designed and constructed in compliance with the provisions of the Ordinance. On appeal, plaintiff challenges the actions of the Oxford ZBA in granting Schneider the variances and challenges the OPC's approval of the site plan.³

Plaintiff first argues that the Oxford ZBA's decision granting a variance is unlawful because the Oxford ZBA failed to comply with procedures required by the Ordinance and because no record evidence demonstrates compliance with the criteria for obtaining a variance. In essence, plaintiff argues that the trial court erred in affirming the Oxford ZBA's decision to grant Schneider's request for variances because the Oxford ZBA failed to make the requisite findings of fact and that the Oxford ZBA's decision to grant Schneider's request for variances was not supported by competent, material, and substantial evidence on the record.

Because in the present case a village is involved, MCL 125.585(11) is applicable. MCL 125.585(11) provides that the decision of a zoning board of appeals is final. However, this provision allows appeal of a decision to the circuit court, and provides that the circuit court shall review the zoning board of appeals record and decision to ensure that the decision: (a) complies with the constitution and laws of Michigan; (b) is based on proper procedure; (c) is supported by competent, material, and substantial evidence on the record; and (d) represents the reasonable exercise of discretion granted by law to the board of appeals. MCL 125.585(11); *Reenders v Parker*, 217 Mich App 373, 378; 551 NW2d 474 (1996); see also *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich App 197, 201; 651 NW2d 464 (2002). This Court's review of an appeal from a city zoning board decision to circuit courts is de novo; however, we accord great weight to the findings of the circuit court and the zoning board. *Cryderman v Birmingham*, 171 Mich App 15, 20; 429 NW2d 625 (1988).

² On November 5, 1998, plaintiff filed a "verified complaint for injunctive relief and claim of appeal" in the circuit court concerning the Oxford ZBA's actions. On December 23, 1998, plaintiff filed a "complaint [for mandamus] and claim of appeal" concerning the OPC's actions.

³ Specifically, in plaintiffs' prayer for relief on appeal, plaintiff requests reversal of the trial court's decision, reversal of the Oxford ZBA's decision granting Schneider a variance with direction to the Oxford ZBA to issue a decision denying Schneider's variance, direction to the trial court to issue a permanent injunction restraining further construction or use of the project, and reversal of the OPC's decision approving Schneider's site plan with direction to the OPC to issue a decision disapproving Schneider's site plan based on its noncompliance with applicable provisions in the Ordinance. However, plaintiff's arguments on appeal to this Court address only whether the Oxford ZBA's and the OPC's decisions were proper and do not separately address their claims before the trial court for an injunction and mandamus. In these circumstances, we view our responsibility to be the determination of whether the trial court's review of the ZBA's and OPC's decisions was proper.

In the present case, section 23.03 of the Ordinance sets out the Oxford ZBA's powers and duties and provides, in relevant part:

The Board shall have all powers and duties granted by State law and by this Ordinance, including the following specific powers:

* * *

(c) Variances. To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where existing conditions or factors would result by the strict application of this Ordinance in peculiar or exceptional practical difficulties, provided that such relief may be granted without substantial detriment to the surrounding properties or the general public good and without substantially impairing the intent and purpose of this Ordinance.

Section 23.04 of the Ordinance sets forth the rules regarding the application of the Oxford ZBA's variance power:

(a) Application. A variance may be allowed by the Board only in cases involving practical difficulties or unnecessary hardship when the evidence in the official record of an appeal supports all of the following findings:

1. That the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and results from conditions which do not exist generally throughout the Village.
2. That the alleged hardship and practical difficulties which will result from a failure to grant the variance include substantially more than mere inconvenience or inability to attain a higher financial return.
3. That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Ordinance, the individual hardships that will be suffered by a failure of Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance. [Emphasis in original.]

(b) Conditions. The Board shall impose such conditions and requirements, in connection with any decision to grant a variance, as it shall deem reasonable to minimize any potential detrimental effects of its decision and to promote the purposes of this Ordinance.

Additionally, § 23.05(b) provides that every decision of the Oxford ZBA "shall be based upon finding of fact and each such finding shall be supported in the record of the proceedings of the Board." Further, § 23.06, which addresses the procedure for appeals to the Oxford ZBA, provides in pertinent part:

(f) Board Decisions. All such decisions of the Board shall be made at a public meeting by motion and seconded and by roll call vote. The motion *shall* be in the

form of findings of fact and shall state the reasons for the findings by the [B]oard. If the grant of a special exception or variance includes conditions or safeguards, such conditions and safeguards, and the reasons therefore, *shall* be stated in the motion. . . .

(g) Final Record. The requisite *written* findings of fact, the conditions attached, and the decisions and orders of the Board of Appeals in disposing of the appeal, *shall* be entered into the official record for each case. Such record shall show the reasons for the determination, with a summary of the evidence introduced, and reasons for imposition of any conditions imposed. [Emphasis supplied.⁴]

Although the board members affirmatively voted at the conclusion of the August 11, 1998, hearing on the ultimate question of whether to grant Schneider's request for variances (four to one vote in favor of Schneider), we conclude that the board failed to make adequate factual findings on the record to support its decision and to allow meaningful judicial review.

In *Reenders, supra*, this Court addressed the process by which a zoning board of appeals must render variance decisions, noting that "[m]eaningful judicial review of whether there was competent, material, and substantial evidence on the record to support a zoning board decision requires 'a knowledge of the facts justifying the board's . . . conclusion.'" *Reenders, supra* at 378, quoting *Tireman-Joy-Chicago Improvement Ass'n v Chernick*, 361 Mich 211, 219; 105 NW2d 57 (1960). "Accordingly, 'the board of zoning appeals must state the grounds upon which it justifies the granting of a variance.'" *Reenders, supra*. The *Reenders* Court explained that "[i]t is insufficient for the zoning board to merely repeat the conclusory language of the zoning ordinance without specifying the factual findings underlying the determination that the requirements of the ordinance were satisfied in the case at hand." *Id.* at 378-379, citing *Badanek v Schroskey*, 21 Mich App 582, 584-585; 175 NW2d 784 (1970).

Here, an Oxford ZBA member presented the following motion: "I guess then I would make a motion to approve it [apparently the request for variances] subject to that the developer would add a board fence along with the landscaping, and a no right turn onto First Street." The motion was seconded and then voted on. After a four to one vote, the chairman announced that Schneider's "variance has been granted." The trial court found that the fact that the Oxford ZBA had considered various documentary evidence as well as the concerns of nearby residents, and required Schneider to include a fence with the landscaping and a no-right-turn sign, indicated that the decision was supported by competent, material and substantial evidence on the whole record. However, other than the requirements of a fence and a sign, the minutes from the August 11, 1998, Oxford ZBA meeting are devoid of direct factual findings and thus do not comply with the strict requirements of the Ordinance. Although there were comments from some board members from which one may attempt to infer that member's thinking on the issue, the record contains no clear findings of fact as required by sections 23.05(b) and 23.06(f) and (g) of the Ordinance. For example, the motion at the August 11, 1998, Oxford ZBA meeting merely sought approval of the variances subject to delineated conditions, but did not make findings of

⁴ Section 2.01 of the Ordinance contains rules of interpretation, including that "[t]he word 'shall' is always mandatory and not discretionary." Section 2.01(c).

fact concerning the requirements of §§ 23.03(c) or 23.04, nor state the reasons for any findings. Contrary to the requirements of the Ordinance and *Reenders, supra*, there were insufficient factual findings by the Oxford ZBA identifying and explaining the basis and reasoning for the approval of the variances from which the trial court, or this Court, could partake in meaningful judicial review. Thus, we reverse the trial court's judgment affirming the decision of the Oxford ZBA and remand to the circuit court with directions to remand to the Oxford ZBA for the required findings of fact and for the reasoning by which it concluded that the variances were appropriate.

Plaintiff also challenges the OPC's approval of Schneider's site plan, arguing that the approval was unlawful because the site plan does not comply with the criteria set forth in the Ordinance, the OPC failed to follow mandatory procedures, and the application form and the site plan lacked required information. We find plaintiff's argument without merit.

Substantively, we agree with the trial court that "[t]his matter hinges upon the question of whether the ZBA's grant of variances was proper." To the extent that plaintiff raises alleged technical violations of Article XX of the Ordinance governing site plan review and the approval process, in light of the record we cannot say that the trial court erred in affirming the OPC's decision. Contrary to plaintiff's assertions, the record demonstrates that defendants either fully or substantially complied with the requirements of the Ordinance. The majority of plaintiff's claims concerning the OPC's actions and the requirements of the Ordinance are merely speculation and opinion that the OPC obviously did not agree with or share. Further, specifically with regard to plaintiff's desire for a masonry wall, § 16.14 clearly permits an obscuring greenbelt in place of a wall. To the extent that plaintiff argues that the variances granted did not cover ingress/egress, we consider her argument disingenuous where the record demonstrates what was under consideration by the Oxford ZBA effectively addressed ingress/egress, albeit without citation to a specific provision of the ordinance. The record reveals that the OPC properly approved the site plan because it contains the information required by the zoning ordinance and was in compliance with the ordinance and its conditions, including the receipt of necessary variances from the Oxford ZBA. MCL 125.286e(5).

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra